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Attorneys for Defendant

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

LAURA FINNERTY,)	No. C 08-0027 SI
)	
Plaintiff,)	DECLARATION OF JOSE F. HAMTIG
)	IN SUPPORT OF DEFENDANT'S
v.)	MOTION TO (1) SUBSTITUTE THE
)	UNITED STATES FOR SUSANNA
SUSANNA MERCADO,)	MERCADO AS PARTY DEFENDANT
)	PURSUANT TO 28 U.S.C. § 2679(d)(2)
Defendant.)	AND (2) DISMISS FOR LACK OF
)	SUBJECT MATTER JURISDICTION

Date: February 15, 2008

Time: 9:00 a.m.

I, JOSE F. HAMTIG, declare as follows:

1. I submit this declaration in support of Defendant's Motion to (1) Substitute the United States for Susanna Mercado as Party Defendant Pursuant to 28 U.S.C. § 2679(d)(2) and

[DECLARATION OF JOSE F. HAMTIG IN SUPPORT OF DEFENDANT'S MOTION TO (1) SUBSTITUTE THE UNITED STATES FOR SUSANNA MERCADO AS PARTY DEFENDANT PURSUANT TO 28 U.S.C. § 2679(d)(2) AND (2) DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION]

(2) Dismiss for Lack of Subject Matter Jurisdiction. I have personal knowledge of the matters in this declaration and could testify competently if called upon to do so.

2. I am employed as a Supervisor of Customer Services, United States Postal Services. I am presently assigned to Parkside Station, San Francisco, California. I supervise letter carrier Susanna Mercado.

3. Attached as Exhibit A is a true and correct copy of the San Francisco Police Department police report for incident #070716566 obtained by the USPS from the San Francisco Police Department.

4. USPS policy instructs letter carriers to avoid dogs that they feel present a threat to them and specifically not to deliver mail to addresses at which dogs are unleashed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 4, 2008, at San Francisco, California.


JOSE F. HAMTIG

[DECLARATION OF JOSE F. HAMTIG IN SUPPORT OF DEFENDANT'S MOTION TO (1) SUBSTITUTE THE UNITED STATES FOR SUSANNA MERCADO AS PARTY DEFENDANT PURSUANT TO 28 U.S.C. § 2679(d)(2) AND (2) DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION]

EXHIBIT A

Report Type: Initial

San Francisco Police Department
INCIDENT REPORTFAXED
JUL 16 2007

070716566

Incident Number 070-716-586	Occurrence From Date/Time 07/16/07 14:15	Occurrence to Date/Time	Reported Date/Time 07/16/07 15:30	CAD Number 071972285	070716566
Type of Incident Assault, Aggravated, W/ Other Weapon -04013					
Location of Occurrence 47th Ave At Intersection with/Premise type Taraval St Street, (Not Sidewalk)					
Confidential Report? <input type="checkbox"/>	Arrest Made? <input checked="" type="checkbox"/>	Suspect Known? <input type="checkbox"/>	Suspect Unknown? <input type="checkbox"/>	Non-Suspect Incident? <input type="checkbox"/>	
Domestic Violence? <input type="checkbox"/>				(Type of Weapon Used)	
Reporting Unit 313					
Location Sent Same					
How Cleared? 6	Reported to Bureau General Work	Name Insp. Chin	Star 847	Date/Time 07/16/07 15:30	Elder Victim? <input type="checkbox"/>
		Gang Related? <input type="checkbox"/>	Juvenile Subject? <input type="checkbox"/>	Prejudice Based? <input type="checkbox"/>	

OFFICIAL CERTIFICATION

I declare under penalty of perjury, this report of 5 pages is true and correct, based on my personal knowledge, or is based on information and belief following an investigation of the events and parties involved.

PROP 115 CERTIFIED 5 YEAR/POST

Signature: [Signature]

Reporting Officer Gilmore, Arline M	Star 533	Station TARAVAL	Watch 06-1600	Date 07/16/07 19:41:49
Reviewing Officer <u>[Signature]</u>	Star 533	Station TARAVAL	Watch 15/01	Date 7/16/07
OIC <u>[Signature]</u>	Sgt. Riggle #1713	Station TARAVAL	Watch 1500-0100	Date 07-16-07
Related Case	Related Case	Re-Assigned to Copies to 5G200	Assigned to 5G200	Assigned by Add'l Copies USPS Postal Police

R / V I C T I M

Code R/V	Name (Last, First Middle) Mercado, Susanna	Alias
Day Phone (415) 759-5418	Type Work	Home Address
Night Phone (415) 341-3317	Type Cell	Work Address 1800 Taraval St
DOB / Age 11/24/61 45	DOB Unk.	or age between and
Race W	Sex F	Height
Weight	Hair Color	Eye Color
ID Type	Jurisd.	ID No.
Confidential Person? <input type="checkbox"/>	Violent Crime Notification <input checked="" type="checkbox"/>	293 PC Notification <input type="checkbox"/>
Star 533	Follow-up Form YES <input checked="" type="checkbox"/>	Statement YES <input checked="" type="checkbox"/>
Relationship to Subject Known	Other Information/If Interpreter Needed Specify Language USPS Mail Carrier	

BOOKED

Code B	Name (Last, First Middle) Finnerty, Laura Anne	Alias
Day Phone [Redacted]	Type	Home Address 2343 47th Ave
Night Phone [Redacted]	Type	Work Address
DOB Unknown	Date of Birth [Redacted]	Age 39
Race W	Sex F	Height 5'04
Weight 145	Hair Color RED	Eye Color BRO
SFNO [Redacted]	ID# (if Juvi.)	ID Type/Jurisdiction/Number
Book Section #1	Book Section #2	Book Section #3
Book Section #4	Book Section #5	Booking Location Taraval Station
Warrant #	Court #	Action #
Dept	Enroute to	CWB Check Brown
Star 703	Warrant Violation(s)	Bail
Mirandized <input checked="" type="checkbox"/>	Star 533	Date 04/16/07
Time 15:20	Statement <input checked="" type="checkbox"/>	Location of Appearance
Citation #	Violation(s)	Appear Date/Time
Book/Cite Approval Sgt. O'Brien	Star 184	Mass Arrest Code
M X-Rays <input type="checkbox"/>	School (if Juvenile)	<input checked="" type="checkbox"/> CA Form Booked Copy Attached
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description; Scars, Marks, Tattoos whi hood sweatshirt, blk tshirt, blue jeans, brn sandals		

Dec. 11 2007 04:01PM P 2

FAX NO.: 4157591013

FROM :

070716566

San Francisco Police Department
ADDITIONAL REPORTEE

RP CODES: F - FOUND; N - NOTIFY; P - PARENT; R - REPORTEE; V - VICTIM; W - WITNESS

WITNESS	Code W	Name (Last, First Middle) Waeltz, Barbara		Alias							
	Day Phone	Type	Home Address		City	State	Zip Code				
	Night Phone	Type	Work Address		City	State	Zip Code				
	DOB/ [REDACTED]	Age 66	DOB Unk <input type="checkbox"/>	or age between AND	Race W	Sex F	Height	Weight	Hair Color	Eye Color	ID No.
	Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>	Star 533	F/U Form YES <input checked="" type="checkbox"/>	Statement YES <input checked="" type="checkbox"/>	Relationship to Subject				
	School (if Juvenile)	Injury/Treatment		Other Information/If Interpreter Needed Specify Language							

Code	Name (Last, First Middle)		Alias							
Day Phone	Type	Home Address		City	State	Zip Code				
Night Phone	Type	Work Address		City	State	Zip Code				
DOB/ [REDACTED]	Age	DOB Unk <input type="checkbox"/>	or age between AND	Race	Sex	Height	Weight	Hair Color	Eye Color	ID No.
Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>	Star	F/U Form YES <input type="checkbox"/>	Statement YES <input type="checkbox"/>	Relationship to Subject				
School (if Juvenile)	Injury/Treatment		Other Information/If Interpreter Needed Specify Language							

Code	Name (Last, First Middle)		Alias							
Day Phone	Type	Home Address		City	State	Zip Code				
Night Phone	Type	Work Address		City	State	Zip Code				
DOB/ [REDACTED]	Age	DOB Unk <input type="checkbox"/>	or age between AND	Race	Sex	Height	Weight	Hair Color	Eye Color	ID No.
Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>	Star	F/U Form YES <input type="checkbox"/>	Statement YES <input type="checkbox"/>	Relationship to Subject				
School (if Juvenile)	Injury/Treatment		Other Information/If Interpreter Needed Specify Language							

Code	Name (Last, First Middle)		Alias							
Day Phone	Type	Work Address		City	State	Zip Code				
Night Phone	Type	WORK ADDRESS		City	State	Zip Code				
DOB/ [REDACTED]	Age	DOB Unk <input type="checkbox"/>	or age between AND	Race	Sex	Height	Weight	Hair Color	Eye Color	ID No.
Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>	Star	F/U Form YES <input type="checkbox"/>	Statement YES <input type="checkbox"/>	Relationship to Subject				
School (if Juvenile)	Injury/Treatment		Other Information/If Interpreter Needed Specify Language							

SFPD377 B (03/03)

070716566

San Francisco Police Department
PROPERTY LISTINGS

E	Code/No EVD	Item Description CA Form				Brand		Model	
	Serial No.		Gun Make	Caliber	Color	Narcotics Lab No.		Quantity	Value
	Seized by (Star)		From Where						
	Additional Description/Identifying Numbers signed by (RV)								
E	Code/No EVD	Item Description Cold Show Admonition Form				Brand		Model	
	Serial No.		Gun Make	Caliber	Color	Narcotics Lab No.		Quantity	Value
	Seized by (Star)		From Where						
	Additional Description/Identifying Numbers								
E	Code/No EVD	Item Description Statements				Brand		Model	
	Serial No.		Gun Make	Caliber	Color	Narcotics Lab No.		Quantity 3	Value
	Seized by (Star)		From Where						
	Additional Description/Identifying Numbers by (RV), (W), and (B)								
	Code/No	Item Description				Brand		Model	
	Serial No.		Gun Make	Caliber	Color	Narcotics Lab No.		Quantity	Value
	Seized by (Star)		From Where						
	Additional Description/Identifying Numbers								
	Code/No	Item Description				Brand		Model	
	Serial No.		Gun Make	Caliber	Color	Narcotics Lab No.		Quantity	Value
	Seized by (Star)		From Where						
	Additional Description/Identifying Numbers								
	Code/No	Item Description				Brand		Model	
	Serial No.		Gun Make	Caliber	Color	Narcotics Lab No.		Quantity	Value
	Seized by (Star)		From Where						
	Additional Description/Identifying Numbers								
	Code/No	Item Description				Brand		Model	
	Serial No.		Gun Make	Caliber	Color	Narcotics Lab No.		Quantity	Value
	Seized by (Star)		From Where						
	Additional Description/Identifying Numbers								

SAN FRANCISCO POLICE DEPARTMENT

INCIDENT REPORT STATEMENT

INCIDENT NO. 070716566		NAME (LAST, FIRST, MIDDLE) OF PERSON GIVING STATEMENT FINNERLY LAURA ANN		DOB / AGE [REDACTED]	RESIDENCE PHONE (DAY/NIGHT) [REDACTED]	BUSINESS PHONE (DAY/NIGHT) [REDACTED]
RESIDENCE ADDRESS / CITY IF NOT SAN FRANCISCO 2343 47TH AVE		ZIP CODE 94116	BUSINESS ADDRESS / CITY IF NOT SAN FRANCISCO		ZIP CODE	
DATE OF STATEMENT 07-16-07	TIME STARTED 1510 HRS	TIME COMPLETED	LOCATION WHERE STATEMENT TAKEN AT SCENE <input type="checkbox"/> OTHER: Co. 2.			
STATEMENT TAKEN BY (NAME / STAR) FANENE #1814		IN PRESENCE OF				

The mail lady came by to deliver our mail today and my husband was out front of the house. The mail lady approached him and started lecturing my husband about our dogs. She was making comments about how our garage was open on Thursday the previous week, and did not see our dogs. My husband was trying to talk with her and explain to her that the dogs were not here on Thursday, they were out with the dog walker. We had our garage door open in order to clean it out. My husband asked her to stop meddling in our lives. As she was giving lecture to him about how we should live, take care of our animals, and such she (the mail lady) would not listen to him, and walked away. I opened the window and yelled at her. She ignored me. I then tried to talk with her and she just screamed at me. I then called her a whore and told her to fuck herself. I then went upstairs and called the Parkside Station, spoke to the manager about her harassing me and my family over and over. I was told I would get a phone call back from Supervisor. But Police came and detained me.

I DECLARE, UNDER PENALTY OF PERJURY, THIS STATEMENT OF _____ PAGES IS TRUE AND CORRECT, BASED ON MY PERSONAL KNOWLEDGE.

SIGNATURE OF PERSON GIVING STATEMENT

SAN FRANCISCO POLICE DEPARTMENT

INCIDENT REPORT STATEMENT

INCIDENT NO. 070716566		page 1 of 1	
NAME (LAST, FIRST, MIDDLE) OF PERSON GIVING STATEMENT MERCADO, SUSANNA		DOB / AGE 11-24-61	RESIDENCE PHONE (DAY / NIGHT) 415 341-3317
BUSINESS PHONE (DAY / NIGHT) 415 759-5418		RESIDENCE ADDRESS / CITY IF NOT SAN FRANCISCO 1800 TARAVAL ST	
ZIP CODE 94116		BUSINESS ADDRESS / CITY IF NOT SAN FRANCISCO	
DATE OF STATEMENT 7-16-07	TIME STARTED 1445	TIME COMPLETED 1510	LOCATION WHERE STATEMENT TAKEN AT SCENE <input checked="" type="checkbox"/> OTHER <input type="checkbox"/>
STATEMENT TAKEN BY (NAME / STAFF) GILMORE S83		IN PRESENCE OF	

Appr. 2:00 p.m. Laura Imeri drove a big car very fast towards as I was crossing

I was approached by a fast moving vehicle as I was crossing the street. I had to jump back to avoid being hit. Laura Imeri began screaming at me and asked if I complained about her dogs. I ~~tried~~ ^{to diffuse the} to explain I merely asked ^{her police friend} if the dogs were out, but she proceeded to yell, when I took my phone out she told me to call the fuckin caps. Then she called me a whore and bitch and made an illegal u-turn where again I had to move back to avoid injury. I immediately called 911, body witness did see and hear and gave testimony. Call 553-0123 police were sent, called supervisor Joe.

S. Mercado
I, S. Mercado, UNDER PENALTY OF PERJURY, THIS STATEMENT OF 1 PAGES IS TRUE AND CORRECT, BASED ON MY PERSONAL KNOWLEDGE.
SIGNATURE OF PERSON GIVING STATEMENT

SAN FRANCISCO POLICE DEPARTMENT

INCIDENT REPORT STATEMENT

INCIDENT NO. 070716566		PAGE 1 of 1	
NAME (LAST, FIRST, MIDDLE) OF PERSON GIVING STATEMENT Waeltz, Barbara M		DOB / AGE 66	RESIDENCE PHONE (DAY / NIGHT) (BUSINESS PHONE (DAY / NIGHT)) [REDACTED]
RESIDENCE ADDRESS / CITY / STATE / ZIP CODE [REDACTED]		ZIP CODE [REDACTED]	
DATE OF STATEMENT 7-16-07	TIME STARTED a little after 2 PM	TIME COMPLETED [REDACTED]	LOCATION WHERE STATEMENT TAKEN corner of 47th + Taraval
STATEMENT TAKEN BY (NAME / STAR) /		IN PRESENCE OF [REDACTED]	

a little after 2:00 PM; I was walking down 47th + Taraval and across the street a Large Van or SUV - Black or dark Blue, pulled up on the corner next to the mail person and came up so fast, she almost hit her, and she jumped back.

I thought maybe it was Gordon she knew, maybe joking with her, and heard the mail man talking about the woman's Dogs. The woman in the vehicle was blond and middle aged caucasian and she started yelling at the mail person and calling her a fucking whore, ^{Bitch} and sounded like she was threatening her not to complain about her dogs again. The mail person was trying to explain about the dogs being sitting someone when their garage was open, etc. And then the blond woman, still yelling, pulled drove out + made a fast U Turn almost hitting the mail person again, who had to jump out of the way - the woman proceeded to ~~screech~~ screech down the street (North) still yelling and I came across to see if the mail person was OK. She was ~~been~~ trembling and tearful and she called the Police and

(I DECLARE, UNDER PENALTY OF PERJURY, THIS STATEMENT OF [REDACTED] IS TRUE AND CORRECTLY BASED ON MY PERSONAL KNOWLEDGE)

SIGNATURE OF PERSON GIVING STATEMENT

Barbara Waeltz

Supervisor

070716566

San Francisco Police Department
NARRATIVE

I responded to the above location regarding an assault on a postal worker. (Mail Carrier) On arrival I met with (RV) Mercado, her supervisor, Joe ph:415-759-5418, and (W) Waeltz.

(RV) Mercado was visibly upset and told me the following: She delivers mail and when she got to 2343 47th Ave she noticed the garage door open and (B) Mercado's husband outside. They have two large dogs, a pitbull and a retriever, and Mercado asked if they were inside as she feared for her safety. Mercado told me that the dogs had almost bit a temp. mail carrier in the past. The man got angry and told her not to worry about the dogs, so Mercado continued on her route. When she got to the end of the street, she began to cross 47th Ave. west to east, when suddenly a large blue truck approached at a high rate of speed. Mercado jumped back to avoid being hit. Mercado told me that the truck passed the limit line and stopped where she had been in the crosswalk. The driver, (B) Finnerty, who Mercado recognized as the resident at 2343 47th Ave, began yelling abuse at Mercado. Finnerty was screaming at her about complaining about her dogs and would not listen to Mercado as she tried to diffuse the situation. Mercado began to call the police and Finnerty stated "call the fucking police, you fucking bitch, you whore." Finnerty then pulled off again at a high rate of speed, making Mercado jump away again to avoid being hit, made a fast u-turn and drove north on 47th Ave. I asked Mercado if she felt in danger of being hit and she replied "she was coming straight for me, I jumped, I wasn't going to wait to see if she hit me." Mercado wrote (E) statement.

(W) Waeltz was standing on the south west corner of 47th Ave/Taraval St. during the incident. She observed a large blue or black truck approach the mail carrier at a high rate of speed causing the mail carrier to jump back. At first she thought it was a friend of the mail carrier trying to scare her, but then she heard the driver shouting at the mail carrier, threatening her. Waeltz described the driver as a white middle aged female with blond hair, wearing unknown color sweats. Waeltz heard the driver say "have you been complaining about my dogs you bitch". She then called the mail carrier "a fucking bitch" and "a fucking whore", and threaten her not to complain about the dogs. Waeltz said that the woman then drove away again at a high rate of speed almost hitting the mail person again. The mail person was tearful and trembling when Waeltz approached her. (See (E) statement by Waeltz).

I contacted Off. Fanene #1814 and asked him to respond to 2343 47th Ave. Fanene made contact with (B) Finnerty. I explained the cold show admonition to Mercado and she positively identified Finnerty as the person who tried to run her down. Finnerty was placed under arrest and transported to Co. I by Off. Fanene. Fanene told me that he observed a blue truck parked outside 2343 47th Ave. License plate 5TKP146, a 2006 Blue Nissan Xterra registered to Finnerty.

It should be noted that Mercado had given us the last name of the suspect as Imeri. Finnerty later told us that her married name was Imeri, but she had reverted to her maiden name of Finnerty. (B)'s name on her CA DL is FinnertyImeri and on her SFPD rap sheet it is Finnerty.

At Co. I, Fanene explained her rights to Finnerty who stated that she wanted to write her side of the incident. Mercado wrote (E) statement. Before reading the statement or talking to Mercado, I read her her Miranda rights from my department issued card. Mercado again stated that she understood her rights and would talk to us. Mercado stated that she has been having problems with the mail carrier since last year when the mail carrier went on vacation. The dogs got out and scared the replacement mail carrier who reported the dogs to Animal Care and Control. When Mercado came back, Finnerty said she had changed, and was no longer friendly with the dogs but acted scared, continually asking if they were secure if she saw the garage door open. Today she got into a verbal with Mercado's husband and then walked away. Finnerty shouted out the window at her calling her

Incident# 070716566

Dec. 11 2007 04:08PM P B

FAX NO. : 4157591010

Page 4 of 5

FROM :

a whore and told her to fuck her. If Finnerty denied that she followed her in a vehicle, then stated "it was my sister, she called her a bitch". Finnerty stated that she had never left the house, but had called the postal supervisor after the incident.

At Co. I Finnerty complained of having Asthma. Medic 18 responded and cleared Finnerty who was then booked on the above listed charge. All evidence was booked by me at Co. I. Mercado and Waeltz were given follow up information at the scene and Mercado was given a victim of violent crimes form.

Incident# 070716566

Dec. 11 2007 04:10PM P 9

FRX NO. : 4157591013

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FROM :